

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company to issue, sell, and deliver one or more series of Debt Securities and to guarantee the obligations of others in respect of the issuance of Debt Securities, the total aggregate principal amount of such long-term indebtedness and guarantees not to exceed \$2 billion; to execute and deliver one or more indentures; to sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property; to issue, sell and deliver in one or more series, an aggregate amount not to exceed \$200 million par or stated value of First Preferred Stock -- \$25 Par Value; to issue an aggregate \$2.0 billion of short-term debt obligations; to utilize various debt enhancement features; enter into interest rate hedges; and for an exemption from the Commission's Competitive Bidding Rule. (U 39 M)

Application 04-05-041  
(Filed May 27, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING  
GRANTING MOTION TO FILE UNDER SEAL**

**1. Summary**

This ruling grants the motion filed by Pacific Gas and Electric Company (PG&E) to place under seal the document entitled Pacific Gas and Electric Company, Cost of Capital 2004 and 2005, Workpapers Supporting Chapter 4, New Money Notes and Reinstated Debt (PC Bonds), Volume 2 of 2, Unredacted Pages Only (referred to hereafter as the "Unredacted Workpapers"). The Unredacted Workpapers support PG&E's Application (A.) 04-05-023 (which is a

different proceeding). This ruling does not prevent the assigned Administrative Law Judge (ALJ) in A.04-05-023 from publicly disclosing some or all of the Unredacted Workpapers.

## **2. Requested Relief**

PG&E states that the Unredacted Workpapers contain the following information: (1) proposed fees and prices for debt and credit facilities that were submitted by lenders and financial intermediaries competing for PG&E's business; (2) PG&E's analysis of the proposed fees and prices; and (3) the fees and prices associated with some of PG&E's outstanding debt and credit facilities. PG&E argues that the Unredacted Workpapers need to be placed under seal to avoid harming PG&E's ability to negotiate favorable fees and prices in the future.

## **3. Discussion**

The purpose of Pub. Util. Code § 583 and General Order (GO) 66-C is to provide public access to information concerning the conduct of the people's business while counterbalancing the right to shield confidential information from public disclosure. In accordance with their purpose, Section 583 and GO 66-C permit the Commission to withhold records from the public when the facts of the particular case show that the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

Perhaps one of the Commission's most detailed analyses of the balancing of the public interest in an open regulatory process with a utility's desire to shield information from disclosure was a case involving Pacific Bell. (*In re Pacific Bell* (1986) 20 CPUC 2d 232.) In that case, the Commission stated:

PacBell must understand that in balancing the public interest of having an open and credible regulatory process against its desires not to have data it deems proprietary disclosed, we give far more weight to having a fully open regulatory process. (20 CPUC 2d at 257.)

The standard applied by the Commission is a stringent one. The mere fact that a utility labels a statement or a document “proprietary” does not make it so. In the *Pacific Bell* case, the Commission stated:

Certainly there are times to be concerned about full disclosure of proprietary data. Classic examples are customer lists, true trade secrets, and prospective marketing strategies where there is full-blown – and not peripheral – competition. To make the assertion stick that there are valid reasons to take unusual procedural steps to keep data out of the public record (*e.g.*, sealed exhibits, clearing the hearing room or sealed transcripts), there must be a demonstration of imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental. (20 CPUC 2d at 252.)

PG&E has met its burden to place the Unredacted Workpapers under seal. Consistent with the Commission's practice, the Unredacted Workpapers will be placed under seal for two years. This ruling does not prevent the assigned ALJ in A.04-05-023 from publicly disclosing some or all of the Unredacted Workpapers.

Therefore, **IT IS RULED** that:

1. The motion of Pacific Gas and Electric Company (PG&E) to place under seal the document entitled Pacific Gas and Electric Company, Cost of Capital 2004 and 2005, Workpapers Supporting Chapter 4, New Money Notes and Reinstated Debt (PC Bonds), Volume 2 of 2, Unredacted Pages Only is granted. This document shall remain under seal for a period of two years from the date of this ruling. During that period the document shall not be made accessible or disclosed to anyone other than the Commission staff except upon (i) execution of an appropriate non-disclosure agreement with PG&E, or (ii) further order or ruling of the Commission, the Assigned Commissioner, the assigned

Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

2. If PG&E believes that further protection of the document placed under seal is needed, it may file a motion stating the justification for further withholding of the document from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date of today's protective order.

3. This ruling does not prevent the assigned ALJ in Application 04-05-023 from publicly disclosing some or all of the document placed under seal by this ruling.

Dated July 21, 2004, at San Francisco, California.

/s/ TIMOTHY KENNEY  
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Timothy Kenney  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion to File Under Seal on all parties of record in this proceeding or their attorneys of record.

Dated July 21, 2004, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

**N O T I C E**

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